

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; and UNITED
STATES CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The International Refugee Assistance Project (“IRAP” or “Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory and injunctive relief to enforce its right to agency records from the Department of Homeland Security (“DHS”) and its component agency, United States Citizenship and Immigration Services (“USCIS”) (collectively, “Defendants”).

2. Plaintiff seeks records regarding the evidentiary standards which Defendants require as proof of the “informal” or “camp-based” marriage of refugees, asylum seekers, and “Follow-to-Join” applicants in the absence of formal documentation.

3. On July 13, 2018, Plaintiff submitted a FOIA request (the “FOIA Request”) to Defendants seeking guidance issued by Defendants’ Office of Chief Counsel to USCIS’s Refugee Asylum and International Operations Directorate concerning the documentation

required by Defendants to establish the validity of refugees' informal or "camp-based" marriages in adjudications conducted for resettlement and "follow-to-join" purposes.

4. Defendants should have acted on the FOIA Request by no later than September 4, 2018. To date, Defendants have failed to produce any records or to provide any substantive response to the FOIA Request.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346. This Court also has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in the Southern District of New York pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e). Venue is proper because (i) IRAP is based in and has its principal place of business in this district, (ii) a substantial portion of the events giving rise to this action occurred in this district, and (iii) because upon information and belief Defendants maintain records and information subject to the FOIA Request in this district.

PARTIES

7. Plaintiff IRAP is a nonpartisan human rights organization and a 501(c)(3) entity. IRAP organizes law students and lawyers to advocate for and advance the legal rights of refugees and displaced persons. IRAP engages in systemic policy advocacy, and represents refugees in legal proceedings *pro bono*. IRAP's headquarters are located within the jurisdiction of this Court.

8. Defendant DHS is a federal agency within the meaning of 5 U.S.C. § 552(f). DHS is the executive department responsible for enforcing federal immigration laws and is an

agency of the United States. DHS has possession of, and control over, the information Plaintiff seeks through the FOIA Request.

9. Defendant USCIS is a component agency of DHS and an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). USCIS has possession of, and control over, the information Plaintiff seeks through the FOIA Request.

STATUTORY BACKGROUND

10. The Freedom of Information Act, 5 U.S.C. § 552, (“FOIA”) requires all federal agencies to search for and disclose government records which are requested by a member of the public, subject to certain narrow exceptions. 5 U.S.C. § 552(a)(3)(A), (C); 5 U.S.C. § 552(b)(1)-(b)(9).

11. Compliance with FOIA’s disclosure obligations upholds the values of government transparency and accountability. Federal agencies must respond to FOIA requests within twenty business days after receipt, although the deadline may be extended an additional ten working days “[i]n unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i).

12. The agency’s written response must state whether it will comply with the FOIA request, indicate the reasons for that determination, and provide information regarding the process by which a requester may appeal an agency’s adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

13. All administrative remedies are deemed exhausted due to an agency’s failure to comply with FOIA’s statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

14. Upon an agency’s failure to meet its obligations, a district court may order the production of those records responsive to the FOIA request. 5 U.S.C. § 552(a)(4)(B).

FACTUAL BACKGROUND

15. Defendants' refugee resettlement and family reunification programs ordinarily require displaced persons – including refugees, asylum seekers, their spouses and children – to establish the *bona fides* of familial relationships by providing formal documentary evidence. Defendants' evidentiary requirements also impact permanent residents whose family members participate in Defendants' "Follow-to-Join" immigration process.

16. In many refugee and family reunification cases, however, the requisite state-issued civil documentation ("formal documentation") is either nonexistent or unobtainable. Refugees will often lack the financial resources required to access civil registries or encounter difficulties in doing so because of their refugee status.

17. Where no formal documentation is presented, Defendants apply guidelines in adjudicating the evidentiary sufficiency of purported familial relationships (the "informal evidence policy").

18. On information and belief, Defendants revised their informal evidence policy at some time between December 1, 2017 and February 28, 2018 (the "new policy").

19. IRAP understands that the revised policy contains new restrictions regarding Defendants' consideration of informal evidence in adjudicating assertions of family relationship.

20. On information and belief, the new policy has prevented displaced persons who would otherwise have been able to enter the United States to join their family members from being able to do so.

21. IRAP believes that the burdens of this policy change fall most severely upon refugees from the least-developed countries.

PLAINTIFF'S FOIA REQUEST

22. On July 13, 2018, Plaintiff served the FOIA Request seeking Defendants' disclosure of formal guidance regarding the new evidentiary standards used to evaluate familial relationships in the absence of formal documentation. A copy of the FOIA Request is attached as **EXHIBIT 1** to the Supporting Declaration of Betsy Fisher, filed herewith ("Fisher Decl.").

23. FOIA requires that an agency timely disclose all records responsive to a FOIA request unless the items sought are enumerated in one of nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(b)(1)-(b)(9).

24. FOIA's deadlines require that Defendants "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i).

25. On July 23, 2018, Defendants sent confirmation to Plaintiff that it had received the FOIA Request and assigned it a tracking number (NRC2018109422) (the "Confirmation Letter"). The Confirmation Letter stated that Defendants would search for documents responsive to the FOIA Request and determine if those documents were producible. A copy of the Confirmation Letter is attached as **EXHIBIT 2** to the Fisher Declaration.

26. The Confirmation Letter invoked an extension ordinarily reserved for "certain circumstances" but statutorily limited to "ten working days." 5 U.S.C. § 552(a)(6)(B)(i). *See* Ex. 2 to Fisher Decl. The Confirmation Letter further advised that Defendants had placed IRAP's FOIA Request "in the complex track (Track 2)" and invited IRAP to narrow its request "to a single document in order to be eligible for the faster track." *See id.*

27. On September 18, 2018, IRAP’s Policy Director wrote to Defendants asking that the FOIA Request be transferred from the complex track to the simpler track. A copy of this correspondence is attached as **EXHIBIT 3** to the Fisher Declaration. IRAP advised that it understood its request to pertain to “*a single document* released from OCC [Office of Chief Counsel] to RAIO [Refugee, Asylum and International Operations Directorate]” and that this was “a simple request that could be readily produced” by Defendants. *See id.* (emphasis added).

28. On October 23, 2018, having received no substantive response to IRAP’s communication of September 18, 2018, IRAP again wrote to Defendants to follow-up on its pending request to transfer the FOIA Request to the “simpler track.” A copy of this correspondence is attached as **EXHIBIT 4** to the Fisher Declaration.

29. That same day, the FOIA Office at Defendant USCIS responded with a one-line, unsigned email stating that “[t]he requested documents could be more than 3 pages, that is why it is in a Track 2.” A copy of this correspondence is attached as **EXHIBIT 5** to the Fisher Declaration.

30. IRAP has received no further communications from Defendants with regard to its pending FOIA Request.

31. To date, Defendants are six months and a day in default on their response to the FOIA Request.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. A requester is deemed to have exhausted all available administrative remedies as a matter of law where an agency fails to comply with FOIA’s statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

33. Thereafter, a district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure under FOIA. 5 U.S.C. § 552(a)(4)(B).

34. Over seven months have elapsed since Plaintiff submitted its FOIA Request, and Defendants have failed to produce any records or provide a substantive response to the request. Defendants have failed to comply with FOIA's statutory time limits.

35. As a result of Defendants' failure to comply with their FOIA obligations, Plaintiff has exhausted its administrative remedies with respect to the FOIA Request.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE FREEDOM OF INFORMATION ACT

36. Plaintiff reincorporates by reference the allegations contained in the foregoing numerical paragraphs as if each such allegation was set forth herein in its entirety.

37. Defendants have violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly release agency records in response to the FOIA Request.

38. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to the FOIA Request.

39. Defendants have violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to make a determination regarding the FOIA Request within the governing statutory time limit.

40. Defendants have violated 5 U.S.C. § 552(a)(3)(B)-(D) by failing to conduct an adequate search of records responsive to the FOIA Request.

41. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold agency records, in whole or in part, in violation of FOIA.

Plaintiff will suffer irreparable injury from, and have no adequate remedy for, Defendants' illegal withholding of government documents subject to its FOIA Request.

42. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff herewith prays for the following relief:

- (a) For a judicial declaration confirming that Defendants' failure to disclose the records requested by Plaintiff is unlawful;
- (b) For injunctive relief ordering Defendants to immediately and expeditiously (i) produce to Plaintiff all non-exempt responsive documents covered by the FOIA Request, and (ii) submit a detailed descriptive index justifying Defendants' withholding of any responsive documents, *see generally Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973);
- (c) For Plaintiff's reasonable attorney's fees and litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (d) For such other relief as the Court may deem just and proper.

Respectfully submitted, this 5th day of March, 2019.

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